

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of

Review of the Commission's  
Broadcast and Cable  
Equal Opportunity  
Rules and Policies  
And

Termination of the  
EEO Streamlining Proceeding

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MM Docket No. 98-204

MM Docket No. 96-16

COMMENTS OF AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS

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## **I. Introduction and Summary**

The American Federation of Television and Radio Artists ("AFTRA") is a national labor organization representing approximately 80,000 performers and newsmen employed in the news, entertainment, advertising and sound recording industries. AFTRA members are seen and heard on radio and television stations throughout the United States in their capacities as actors, announcers, news broadcasters, singers, dancers, sportscasters, disc jockeys, talk show hosts and other roles. Entities who employ AFTRA members include the three major networks and Fox and their owned and operated stations, as well as local radio and television stations owned by independent and group owners. AFTRA maintains and enforces more than three hundred collective bargaining agreements with these employers. In addition, AFTRA is actively involved in a myriad of other issues that affect our members, including, but not limited to issues under the auspices of the Federal Communications Commission (the "Commission"), such as ownership consolidation and Equal Employment Opportunity ("EEO") rules.

AFTRA believes that the dissemination of diverse views and information serves an important public interest in our democratic society. Moreover, AFTRA has observed that the Commission's EEO rules have played a critical role in promoting that public interest by ensuring that stations' workforces reflect the diversity of the communities that they serve, which thereby has increased the likelihood that the programming of those stations also reflects such diversity. Thus, AFTRA strongly believes that the Commission's promulgation of new

EEO rules must similarly advance the statutory and public interest policies favoring diversity in ownership, employment and programming in the broadcast industry.

AFTRA understands that the Commission's proposed EEO rule revision would "require outreach efforts designed to ensure that minority and female applicants are informed of, and have an opportunity to apply for, openings at broadcast stations."<sup>1</sup> AFTRA further understands that the proposal would not contain requirements for employers to assess how the composition of their employment profile compares with the composition of the local labor force, nor would the Commission use such a comparison when assessing an entity's EEO program.<sup>2</sup>

AFTRA's comments as to MM Docket No. 98-204 and MM Docket No. 96-16, contained herein, address the implications of these proposed changes to the Commission's EEO rules, notice of which was adopted in response to the D.C. Circuit Court of Appeals decision in Lutheran Church-Missouri Synod v. FCC ("Lutheran Church").<sup>3</sup> Specifically, AFTRA will direct its comments to three issues. First, AFTRA believes that the Commission is vested with the authority to retain the anti-discrimination provisions of broadcast EEO rules and to adopt the new EEO outreach requirements for broadcasters. Second, while the Commission is no longer permitted to utilize comparative data on the employment of women and minorities in relation to the local labor force for the purpose of evaluating licensees'

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<sup>1</sup> "FCC Proposes New EEO Rules to Meet Lutheran Church Court Case Concerns," FCC Press Release, Report No. MM 98-17, November 19, 1998.

<sup>2</sup> *Id.*

<sup>3</sup> "In *Lutheran Church*, the D.C. Circuit Court held that the Commission's EEO Program requirements, part of the EEO Broadcast Rule, were unconstitutional but made it clear that other requirements of this type might be constitutional." Order and Notice of Proposed Rule Making, MM Docket No. 98-204, at 2.

compliance with anti-discrimination rules, AFTRA believes that the continued collection of such data would serve additional constitutionally permissible purposes.<sup>4</sup> Third, AFTRA supports the Commission's conclusion that specific recruitment and outreach requirements will further the Commission's statutory EEO goals. Finally, please note that AFTRA has submitted comments previously with regard to the issues raised by the Commission's proposals addressed in MM Docket No. 96-16. AFTRA hereby reaffirms its position as to the remaining viable issues (See Exhibit A).<sup>5</sup>

## **II. The Commission Has Authority to Promulgate an Employment Anti-Discrimination Rule and New Outreach Requirements**

AFTRA agrees with the Commission that there is ample statutory authority for the Commission to retain the EEO anti-discrimination rule and to promulgate new EEO outreach requirements, consistent with the constitutional standards adopted in *Lutheran Church*. In fact, we believe that the Commission has been assigned the responsibility of fostering equal employment and ownership opportunities in the broadcast industry.

The Commission presented a three-level analysis in the Notice of Proposed Rule Making ("NPRM").<sup>6</sup> First, Congress has ratified the Commission's authority in this area on

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<sup>4</sup> Order and Notice of Proposed Rule Making, MM Docket No. 96-16, at 3. *See also* Comments of AFTRA (Exhibit A).

<sup>5</sup> The Commission has terminated MM Docket No. 96-16, "except for the petition for reconsideration filed in response to Streamlining Broadcast EEO Rule and Policies for religious broadcasters." AFTRA addressed the relevant issues in its previous comments. Order and Notice of proposed Rulemaking, MM Docket No. 96-16, at 2.

<sup>6</sup> Order and Notice of Proposed Rule Making, MM Docket No. 98-204, at 7.

several occasions. Second, the Commission's promulgation of these rules and outreach requirements furthers the Commission's statutory goal of promoting minority and female ownership. And third, the Commission's rulemaking, by promoting minority and female ownership and employment in broadcasting, furthers the public interest goal of diversity in programming.<sup>7</sup> AFTRA agrees fully with all three prongs of the Commission's analysis of its statutory authority. Below, we specifically address the Commission's assertion that it possesses "authority to adopt rules fostering equal employment in the broadcast industry in order to further the statutory goal of fostering minority and female ownership...[and] the public interest goal of diversity of programming..."<sup>8</sup>

**a. Statutory Goal of Promoting Employment of Women and Minorities**

Section 309(j) of the Communications Act, as amended in 1997 (the "Act"), requires that the Commission award broadcast licenses through competitive bidding. In its implementation of the process of competitive bidding, the Commission must comply with the language of the Act that requires the Commission to "promote economic opportunity and competition ... by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including ... minority groups and women."<sup>9</sup> The language of 309(j) goes on to cite specific examples of ways that the Commission can encourage minority and female ownership, including tax certificates and bidding preferences.<sup>10</sup> Clearly, this language establishes that Congress sees the role of the

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<sup>7</sup> *Id.* at 8.

<sup>8</sup> *Id.*, citing 309(j) of the Act.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

Commission to be a proactive one as it encourages the Commission to seek out effective means of achieving the statutory goal of minority and female ownership. In its NPRM, the Commission also cites the House Commerce Committee's comments during discussions of cable EEO requirements in 1984 as evidence that there is a statutory goal of promoting female and minority ownership.<sup>11</sup> Congress has on these and several other occasions affirmed the authority of the Commission to establish rules in furtherance of the important goal of promoting diversity of ownership and employment in the broadcast industry. In fact, AFTRA agrees with the Commission's assessment that Congress has vested in the Commission not only the authority but also the responsibility to achieve this goal.<sup>12</sup> Furthermore, AFTRA believes that the Commission's past efforts to fulfill that responsibility have played a vital role in furthering the goals of diversity in broadcasting. It has been AFTRA's observation that because of the Commission's requirements and programs, licensees are now more aware of the importance of diversity in their industry, not simply for reasons of compliance, but in recognition of the positive effects on their product.

**b. Public Interest in Programming Diversity**

AFTRA agrees that the Commission's statutory authority to promulgate EEO rules to further the goal of diversity of ownership and employment also supports a public policy promoting program diversity. The NPRM provides several valid examples of the "broad authority" of the Commission under the Act to "regulate and license broadcasters as the public

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<sup>11</sup> "... a strong EEO policy is necessary to assure that there are sufficient numbers of minorities and women with professional and management level experience within the cable industry, so that there are significant numbers of minorities and women with the background and training to take advantage of existing and future cable system ownership opportunities." *Id.*

convenience, interest or necessity require.”<sup>13</sup> Of course, as the Commission points out, the employment of minorities and women in the broadcast industry does not guarantee that the goal of program diversity will be achieved. However, it is clear that without the employment of minorities and women in the broadcast industry, the potential for the development of programs of diverse viewpoints is limited.

The Commission has asked for comment as to the possibility of a nexus between the employment of minorities and women in broadcasting and the presentation of diverse programming. AFTRA agrees with the Commission’s view that the employment of minorities and women in both high level management positions and lower level positions in the broadcast industry will assist in ensuring that program diversity will be promoted. Our experience, through administering hundreds of collective bargaining agreements with television and radio stations across the country, leads us to the conclusion that such a nexus does exist. While it cannot be said that program diversity at those stations results solely due to the employment of minorities and females, it has been our experience that these employees have considerable influence over programming. Moreover, these employees do not necessarily occupy positions in top-level management. AFTRA represents a varied array of broadcast employees, including production assistants, writers, reporters and anchors, all of whom exert considerable influence over the production of programming.

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<sup>12</sup> *Id.* at 8.

<sup>13</sup> *Id.*, citing Sections 301, 303, 307 and 309 of the Communications Act. The NPRM also cites 1996 amendments to Section 1 of the Act, stating that the Commission’s mandate was to regulate the industry so that they are “available, so far as possible, to all people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex.” *Id.* at 11.



Clearly, the goal of “fostering diversity of viewpoints”<sup>14</sup> is an important governmental objective that Congress and the courts have entrusted to the Commission to achieve. We believe that promotion of workforce diversity is a proven effective means of advancing that policy. Therefore, AFTRA believes that the Commission can and must exercise its authority to promulgate rules and outreach programs designed to promote diversity in employment that will increase the potential for diverse programming.

### **III. The Commission Has Authority to Continue the Collection and Use of Data**

While the court in *Lutheran Church* held unconstitutional the Commission’s requirement that licensees assess the composition of their personnel in relation to the labor force of the community as a measure of compliance, AFTRA does not believe that the decision invalidates the authority of the Commission to require licensees to submit information on minority and female employment.<sup>15</sup> Specifically, AFTRA agrees that *Lutheran Church* does not undermine the Commission’s authority to collect statistical employment data for the purpose of analyzing industry trends or monitoring the effectiveness of its EEO rules. Indeed, AFTRA submits that the continued collection by the Commission of data on minority and female employment will be critical to assessing the effectiveness of the new outreach requirements. Any restriction placed upon the Commission’s authority to

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<sup>14</sup> *Id.* at 12, citing *Metro Broadcasting, Inc. v. FCC*. “[r]egulation can be justified as necessary to enable the FCC to satisfy its obligations under the Communications Act of 1934 . . . to ensure that licensees’ programming fairly reflects the tastes and viewpoints of minority groups.”

<sup>15</sup> *Id.* at 13-14.

collect such information would serve only to frustrate the statutory goal of promoting diversity in ownership, employment and programming.

#### **IV. The Commission's New Outreach Requirements Are Necessary to Further Its Statutory EEO Goals**

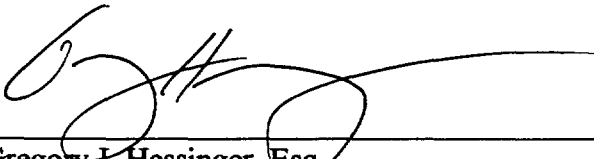
AFTRA's experience in the broadcasting industry has been that absent affirmative outreach and recruitment efforts, women and minorities typically have difficulty in learning of, or taking advantage of, employment opportunities. Heretofore, employers have undertaken such efforts largely in response to the Commission's prior EEO rules. In the wake of *Lutheran Church*, AFTRA strongly believes that specific outreach and recruitment requirements must be adopted to ensure that those efforts do continue. A failure to act would effectively herald the return to prominence of the "old boy network" and word-of-mouth recruiting which, even in circumstances where intentional discrimination does not exist, tends to stifle diversity by drawing applicants almost exclusively from the same backgrounds as current employees. In contrast, specific outreach and recruitment requirements would enhance the likelihood that minorities and women are informed of, and have an opportunity to apply for, openings with broadcast employers. Assuming broad adherence to the Commission's anti-discrimination rule, the resulting diverse applicant pools should, in turn, produce a more diverse workforce that will further the Commission's EEO goals of diversity in ownership and programming.

## V. Conclusion

In sum, AFTRA believes that the *Lutheran Church* ruling, while overturning the Commission's methods, has done nothing to diminish or undermine the Commission's fundamental statutory and public interest policies favoring diversity in ownership, employment and programming in the broadcasting industry. As such, we contend that the Commission continues to have a responsibility to aggressively seek to promote such policies within constitutional boundaries. We believe that promulgation of the proposed new EEO rules would fulfill that responsibility, while also passing constitutional muster. Accordingly, we urge the Commission to adopt the proposed outreach and recruitment requirements and to vigilantly monitor the effectiveness of those requirements through continued employment data collection.

Thank you for the opportunity to present our comments.

Respectfully submitted,

  
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Gregory J. Hessinger, Esq.  
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1/18/99  
Date

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American Federation of Television and Radio Artists



In the Matter of

MM Docket No. 96-16

COMMENTS OF AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS

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## I. Introduction and Summary

The American Federation of Television and Radio Artists ("AFTRA") is a national labor organization representing over 70,000 performers and newsmen who are employed in the news, entertainment, advertising, and sound recording industries. AFTRA members are seen and heard on radio and television stations throughout the United States. AFTRA's membership includes newsmen and performers employed by the three major networks and Fox, their owned and operated stations, as well as by local radio and television stations owned by independent and group owners. AFTRA maintains and enforces more than three hundred collective bargaining agreements with the major radio and television networks and local independently owned and group owned radio and television properties. AFTRA is actively involved in the myriad of issues that affect our members, including FCC issues, ownership consolidation, EEO, and health and safety (See Exhibit A).

Enforceable EEO rules are necessary to promote the dissemination of diverse views and information by insuring that a station's employees reflect the diversity of the community they serve. AFTRA's comments in MM Docket No. 96-16 address the effects of the proposed relaxation of the FCC's Equal Employment Opportunity ("EEO") requirements and the proposed forfeiture guidelines upon both the effectiveness of the EEO rules and upon diversity in the workplace and, correspondingly, in news and public affairs programming.

Based upon its experience in the television and radio industries, AFTRA believes that the Commission's stated rationales for its previous EEO guidelines -- to prevent unlawful discrimination and because a diverse workplace will promote varied views and programming <sup>1</sup> -- remain a legitimate basis for analysis

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<sup>1</sup> Order and Notice of Proposed Rule Making, MM Docket No. 96-16, at 3.

and rule making by the Commission. The current recordkeeping requirements are neither substantial nor burdensome. No evidence of burdensomeness has been presented. In addition, since broadcasters would not be relieved of their self-assessment requirements,<sup>2</sup> they will still have to maintain the same records to comply properly with the self-assessment obligations. Thus, no recordkeeping requirement is being lessened; relaxing the EEO recordkeeping requirements will actually not affect the necessity of maintaining the records but only affect the reporting of the records, which is not burdensome and is necessary to ensure compliance with the EEO policy.

While AFTRA is not opposed to clarification of the current rules to provide more predictability and certainty -- especially in the context of sanctions imposed for violation of the rules -- AFTRA believes that any diminution or relaxation of the Commission's EEO recordkeeping requirements would be contrary to its overall stated goal and adverse to the public interest.<sup>3</sup> An EEO policy without recordkeeping requirements will have no compliance; it is only the possibility of enforcement that ensures compliance.

For reasons set forth below, AFTRA submits that a relaxation of the EEO requirements will operate to reduce the diversity of the work force and of the opinions presented, particularly in local news and public affairs programming and at smaller stations. An EEO policy that does not require the maintenance of

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<sup>2</sup> Order and Notice of Proposed Rule Making, MM Docket No. 96-16, at 16.

<sup>3</sup> AFTRA meets regularly with the networks and show producers to discuss EEO trends in employment. During these meetings, AFTRA relies on the statistics provided by the FCC; these numbers provide the only information acceptable to both sides and have proved the most effective tool to create voluntary EEO improvement. AFTRA believes that these meetings have resulted in some gains in EEO awareness and action. If the FCC no longer requires the same recordkeeping, the FCC's numbers will not be as valuable because they may no longer be as relevant or as accurate.



records necessary to permit enforcement will not be followed. AFTRA believes: 1) newsmen obtain experience that large stations require at small stations, and any relaxation of the current EEO recordkeeping requirements at small stations will prevent minorities and women from obtaining the experience required to succeed as newsmen; in addition, even a small increase in the number of employees permitted to qualify for a small station exemption from 5 to 10 will result in exempting more than half of the stations subject to the EEO rules from the recordkeeping requirements; 2) the size of the local minority labor pool is irrelevant because women typically constitute more than half of the labor force and the labor pool for broadcasters is national, not local -- broadcast station employees move around the nation from station to station and market to market depending on their career status; 3) broadcasters who meet an employment benchmark should not be relieved of their recordkeeping requirements because those broadcasters only reached the benchmark with the current EEO recordkeeping requirements, and if those broadcasters are no longer required to maintain the same effort, their minority and female employee compliments will remain stagnant or decrease; 4) the FCC's current standard to determine when to refer to an alternative labor force remains appropriate; and 5) the forfeiture amount should be even greater than \$12,500.00 as this small amount does not provide a sufficient incentive for broadcasters to comply with the EEO policy and, when compared to other types of forfeitures imposed by the FCC, implies that the FCC does not regard its EEO requirements as seriously. In addition, predictability and certainty can only be provided to broadcasters if forfeitures are routinely imposed for violations of the EEO requirements.

## **II. The FCC Should Not Increase The Size Of Stations That Can Qualify For The Small Station Exemption**

The Commission's primary concern should be to ensure that any changes made to the small station exemption do not undermine the effectiveness of its EEO program. Only if the FCC can reduce the

recordkeeping requirements of broadcasters without reducing the effectiveness of its EEO rules and policies should the written requirements be altered.

Even now, the recordkeeping requirements are not burdensome.

When the Commission ... gave final approval to its rules, it reiterated that it did "not expect small stations to submit elaborate programs" and that the purpose of the rules is to "make the broadcaster focus on the problem." 23 F.C.C.2d at 433. It concluded the rules could "be met by all stations, large or small, with reasonable good will." Id.

Office of Communications of the United Church of Christ v. FCC, 560 F.2d 529, 534 (2d Cir. 1977).

"It is clear that elaborate programs are not expected of small stations, 23 F.C.C.2d at 433, and ... only a few hours each year would be required to complete it. [footnote omitted]" Id.

Thirty-two percent (32%) of stations subject to the Commission's EEO rules have fewer than five employees and do not have to submit detailed written EEO programs currently. If the guidelines were amended to provide this exemption to stations employing ten persons or less, an additional eighteen and a half percent (18.5%) of the stations now required to comply with the EEO rules will be exempt from the recordkeeping requirements. Thus, if the FCC increases the number of employees necessary to qualify for a small station exemption from five to ten, more than half of the stations subject to the EEO rules will be exempt from the written recordkeeping requirements. An EEO policy that does not require proof of compliance has no efficacy. <sup>4</sup>

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<sup>4</sup> For example, despite the broadcasters' statements to the FCC that they would continue to air public affairs programs if the Fairness Doctrine were eliminated, thousands of public affairs programs across the country virtually disappeared, leaving hundreds of performers and newsmen without jobs, after the elimination of the Fairness Doctrine in 1987. Without the possibility of enforcement, public affairs programs disappeared. Likewise, without the EEO recordkeeping requirement and, therefore, the possibility of enforcement, the effectiveness of the FCC's EEO

Any change in the rule will, when applied in the real world, exacerbate an existing problem. Applicants for employment often turn to small stations to acquire the skills and experience required by larger stations. For example, Belva Davis, a TV journalist, Chairperson of AFTRA's National Equal Employment Opportunities Committee and AFTRA National Vice President, began her career at KSAN, when it was a small radio station. According to Ms. Davis, "applicants need to have experience before being hired by large stations, and historically, the only place to acquire the necessary experience was at small stations." Women and minorities are at the entry rung of the broadcasting ladder. It remains imperative, therefore, that minority and women applicants have an equal opportunity to obtain jobs at small stations -- the starting place for most newsmen.<sup>5</sup> Any relaxation of the current EEO requirements at small stations will harm minorities and women when they try to get a start in the broadcasting business and will make an already difficult climb nearly impossible.

The reasons cited by broadcasters for their difficulties in recruiting minorities and women in small markets -- "low salaries and availability of mostly entry level positions; competition with communication companies in larger markets and/or with larger staffs and other local employers; and limited financial, personnel, and time resources available for recruiting" <sup>6</sup> -- are the same difficulties small stations must overcome when recruiting in general. To allow these stations to bypass efforts to recruit minorities, when the stations face these same enumerated difficulties in recruiting non-minorities, undermines the FCC's goal of maintaining compliance with the EEO policies. Thus, market size should not be a primary

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policy will disappear.

<sup>5</sup> "[A] study in Michigan ... indicated that stations with fewer than ten employees, which have 15.1% of the jobs in the industry, had 32% of the job opportunities and 41.7% of the entry-level job opportunities." 560 F.2d at 535.

<sup>6</sup> EEO report, 9 FCC Rcd at 6305, as cited in Order and Notice of Proposed Rule Making, MM Docket No. 96-16, at 11.

consideration when deciding which stations should be relieved of EEO recordkeeping requirements.

Nor should the size of the local minority labor force be a primary consideration. The FCC recognizes that this factor does not apply to the recruitment of women because women typically represent half of the labor force. Thus, if this were a consideration, stations would be able to avoid efforts to recruit women even though they constitute a significant portion of the labor force. Further, efforts to attract minority candidates are especially important where the local minority labor force is not large. Most important, the size of the local minority labor force is irrelevant for broadcasters. In AFTRA's experience, there is no "local" labor pool for broadcasters; the broadcaster labor pool is national. Broadcast station employees, particularly those employed in news, move from station to station and market to market depending on their career status, development and opportunities (see Exhibit B).

Arthur Fennell, President of the National Association of Black Journalists, AFTRA member and TV anchor provides a typical example of the broadcaster labor market. Mr. Fennell began his career at a station in the market ranked 140 and moved across the country to larger markets before reaching his current position as a TV anchor in the number four market. Mr. Fennell moved through six different markets. According to Mr. Fennell, "the nature of the broadcasting business almost mandates that newsmen move from market to market for career enhancement. This helps to strengthen their realm of experience and provides insight into the various career opportunities available."

While AFTRA believes no change is appropriate, if the FCC insists on increasing the number of stations eligible for the small station exemption to the EEO recordkeeping requirements, no such exemption should be available to stations employing more than ten persons. In addition, the exempt stations need to remain subject to the existing reporting requirements as modified by one of the two recruiting options

listed in paragraph 24 of the Order and Notice of Proposed Rule Making. No station, including those that are currently exempt, should be exempt from the recordkeeping requirement of the EEO policy unless it satisfies the requirements of either Option 1 or Option 2 set forth in paragraph 24. Such stations, in addition to other efforts, should also be required to contact the relevant labor union for referrals of qualified female and minority candidates. In addition, stations should continue to be required to submit annual hiring information. Stations that recruit and obtain significant minority and female applicants but fail to hire these minorities and women must be noted and reviewed more closely. The submission of all information necessary to permit the FCC to continue to compare the composition of the station's workforce with the relevant labor force remains imperative.

Finally, any change to the employment threshold for required submission of detailed EEO written programs is foreclosed by Office of Communications of the United Church of Christ v. FCC, 560 F.2d 529. The Court held that the reasons previously offered by the FCC to change its EEO reporting policy -- including, the more effective use of scarce resources, the lack of need to enforce the rule as to stations with few employees or formal personnel procedures, the excessive filing burden on small stations and the continued coverage of most employees under the new policy<sup>7</sup> -- were arbitrary and capricious and did not form a rational and explicit justification for a change in policy. These, however, are the exact same rationale put forward now.

### **III. The FCC Should Not Relieve Broadcasters Who Meet An Employment Benchmark Of The Recordkeeping Requirements**

Broadcasters who meet an "employment benchmark" as discussed in paragraph 25 of the Order and

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<sup>7</sup> Order and Notice of Proposed Rule Making, MM Docket No. 96-16, at 15.

Notice of Proposed Rule Making must still be required to submit recruitment and hiring records. The stations have reached this benchmark because of the current EEO requirements, and any relaxation of this policy will, at best, encourage licensees to maintain a static minority and female employment profile. Based upon historical evidence, AFTRA believes that stations' minority and female complements will decrease if the stations are exempt from recordkeeping requirements.<sup>8</sup> The efforts necessary to achieve this benchmark must be continued because a relaxation in such efforts will result in a corresponding decrease in employment diversity.

#### **IV. The FCC Should Continue To Use Its Current Standard To Determine When To Refer To An Alternative Labor Force**

In certain circumstances, the FCC should be permitted to evaluate a station's EEO record by reference to an alternative labor force. However, by definition, such analysis should be rare and only available to a small percent of stations. The current standard used to determine when to evaluate a station's EEO record by reference to an alternative labor force is appropriate. The third prong of this standard, that recruitment efforts directed at the MSA minority labor force have been fruitless, is the most important prong in this evaluation as it is the only part of the test which requires a station to show that it is abiding by the FCC's EEO policies. The station should be required to demonstrate affirmatively that it has repeatedly directed recruitment efforts at the minority labor force in its MSA to no avail.

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<sup>8</sup> Today, in Los Angeles, there are a very few regularly scheduled public affairs programs -- not even one on each network owned station. What was once a forum for diverse public opinion and a great source of local employment for minorities and women quickly vanished with the elimination of the requirement of the Fairness Doctrine.

## **V. The Proposed EEO Forfeiture Guidelines Should Be Increased**

AFTRA approves of the proposed forfeiture guidelines and, if anything, believes that a forfeiture of \$12,500.00 does not provide a sufficient incentive to comply with the EEO policy. As Commissioner Andrew C. Barrett elucidates in his statement, the FCC implies that it does not regard its EEO requirements as seriously as its other regulations when it imposes a forfeiture of only \$12,500.00 for violations of its EEO policy but imposes drastically greater forfeitures on licensees who violate the Commission's other rules (i.e., children's programming).

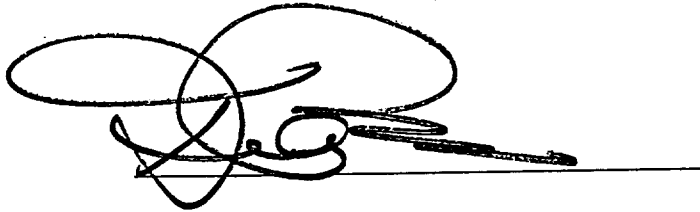
The FCC correctly considers a combination of factors to determine whether a station complies with the "to recruit... so as to attract" portion of the forfeiture guidelines. The definition of "applicant" is more difficult. The FCC should adopt a uniform definition of "applicant" to provide stations with more predictability and to ensure that all stations will be treated equally. Such definition, at a minimum, should require that the individual meets the stated minimum qualifications of the available position and is seriously considered. Perhaps the definition should require that, to qualify as an "applicant," the individual be interviewed. As the Commission presently requires, "vacancies" should only refer to full-time positions; otherwise, stations will relegate minorities and women to the less important and less lucrative part-time positions yet still receive credit for employing minorities and women.

## VI. Conclusion

Adoption of clear guidelines is important to provide broadcasters more predictability and certainty with respect to sanctions to be imposed for violations of the EEO requirements. As a corollary to this, forfeitures must be routinely imposed for violations of the EEO requirements, otherwise there will be no certainty or predictability. It does not follow, however, that the FCC should relax or diminish the recordkeeping and reporting requirements of its EEO policy. To the contrary, relaxation of these requirements will diminish diversity in programming and in the workforce. "[T]he Commission's employment statistics for broadcast stations evidence only a minimal increase in the number of minority employees at broadcast stations, despite what some have considered the Commission's 'aggressive' EEO provisions." <sup>8</sup> Any relaxation of these rules will result, at best, in a static number of minorities and women in the broadcast industry workforce and, in all likelihood, will result in a decrease.

Thank you for the opportunity to present our comments.

Respectfully submitted,



Kim A. Roberts  
Assistant National Executive Director  
American Federation of Television and Radio Artists

6/28/96

Date

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<sup>8</sup> Statement of Commissioner Andrew C. Barrett to Order and Notice of Proposed Rule Making, MM Docket No. 96-16, citing In the Matter of Implementation of Commission's Equal Employment Opportunity Rules, MM Docket No. 94-34, 9 FCC Rcd 6276, 6307 (EEO Report).